SUPREME COURT, U. S.
MAY
MICHAEL

in the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1678

GEORGE P. DONALDSON, JR.,
Petitioner,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. ————

GEORGE P. DONALDSON, JR.,
Petitioner,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner prays that a Writ of Certiorari be issued to review the judgment and decision of the Supreme Court of the State of Florida (the highest Court in which a decision could be had) which was entered in the above entitled cause on October 11, 1973.

OPINIONS BELOW

The judgments and decisions of the Courts and agencies below are not reported, but are included in the appendix hereto [Appendix C (Florida Supreme Court); Appendix DPx 16 (Florida District Court of Appeal; Appendix DPx 11 (Florida Circuit Court); Appendix DPx (Municipal Court)].[1]

JURISDICTION

The judgment of the Supreme Court of the State of Florida was entered on October 11, 1973. Rehearing was denied on January 10, 1974.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3), which provides for review by this Court of final judgments or decrees rendered by the highest Court of a state where a title, right, privilege or immunity is specially set up or claimed under the Constitution of the United States. The time for filing this Petition was extended by order of Mr. Justice Powell on April 10, 1974 (Appendix F).

QUESTIONS PRESENTED

Does the State of Florida deny to the Petitioner his rights to due process of law and equal protection of the laws under Section 1 of the Fourteenth Amendment by denying Petitioner's right to cross examination and confrontation of an accuser in an administrative proceeding that resulted in the suspension of a license, and by denying a right of appeal.

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[1]The symbol "DPx" refers to documents within Appendix D which are designated "Petitioner's Exhibit."

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Fourteenth Amendment to the Constitution of the United States.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

The Petitioner, Donaldson, is a contractor and had a certificate of competency to practice in the City of Plantation, Florida.

On or about November 21, 1968, the Respondent (City of Plantation) served upon Petitioner a notice alleging certain building violations of the City of Plantation Ordinances. The acquisitions were based upon the complaint of C. Douglas Rice, the Chief Building Inspector of the City. (Appendix DPx 4). Thereafter, an administrative hearing was held and testimony was taken before the City Council, pursuant to City Council Ordinance No. 188, that provides as follows:

> The City Council of the City of Plantation shall have jurisdiction over all matters pertaining to

qualifications and disciplinary action of any building contractor; . . . [Code §6-34(H)(I)]

On February 3, 1969, Petitioner's Certificate of Competency was ordered suspended for fifteen (15) days (Appendix DPx 5). Thereafter, Petitioner proceeded to exhaust his administrative remedies as required by the City; i.e., he sought administrative review before the City Judge of the Plantation Municipal Court. The City Judge heard the matter on February 11, 1970, and on October 7, 1970, he affirmed the decision of his City Council (Appendix DPx 6). Thereafter, in an abundance of caution, Petitioner filed Petitions for Certiorari and Notices of Appeal. It was ultimately determined by the State Courts that the proper remedy and form was certiorari in the Circuit Court[2] of the Seventeenth Judicial Circuit of Florida to review the administrative decision of the Respondent, and all other proceedings were dismissed (Appendix DPx 7, 8, 9 and 10).

The hearing on Certiorari in the Circuit Court took place on June 17, 1971, and on February 8, 1973, the lower Court denied the Petition for Certiorari (Appendix DPx 11).

The questions presented to the Circuit Court (on certiorari from an administrative body) included Petitioner's right to due process and equal protection of the law, his right to a fair and impartial hearing and his right of cross examination and confrontation of his accuser. The trial Court was called upon and did rule on

[2]The Circuit Court is a trial Court which also has limited appellate jurisdiction to review "all cases arising in municipal courts". Fla. Const. Art. 5, §6(3).

same, in entering its Final Judgment denying the Petitioner's Petition for Certiorari.

Petitioner filed his timely Notice of Appeal and Assignments of Error before the District Court of Appeal, Fourth District of the State of Florida, on March 8, 1973 (Appendix DPx 1).

On June 25, 1973, after oral argument, the Fourth District Court entered its Order granting the Respondent's Motion,[3] and dismissing Petitioner's appeal (Appendix DPx 16).

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[3]Respondent's Motion to Dismiss or Quash the Appeal (Appendix DPx 3), after setting forth the chronology of certain steps taken in this case, stated:

> [The] Court lacks jurisdiction to hear the present appeal in view of the judicial review of the administrative record by the Municipal Court of the City of Plantation on Appeal and by the Circuit Court by Petition for Writ of Certiorari.
>
> Paragraph 12 of Respondent's Motion stated:
>
> That the record having been judicially reviewed by two other Courts, a third review by this Court, is no more than a frivolous appeal and a violation of the Supreme Court's admonition in Lake v. Lake, Fla. 1958, 103, So.2d 639. . .

The Fourth District Court had entered its Order on April 17, 1973, granting the City of Plantation's Motion for dismissal (Appendix DPx 12). However, on April 26, 1973, Petitioner filed his Motion for Rehearing and Reinstatement of Appeal (Appendix DPx 13) which pointed out that under the Florida Constitution, a Municipal Court has no appeal jurisdiction; therefore, the Municipal Court's only involvement in the cause had been part of the administrative procedure set up by the City Council to review the City Council's administrative action. Thereafter, Petitioner having exhausted his administrative remedies, the Petitioner's case was considered by the Circuit Court under its Constitutional original jurisdiction to issue the extraordinary Writ of Certiorari. In the exercise of that onstitutional original jurisdiction the proceedings did not appear in the Judicial Department of the State Government as a judicial "case" until brought to the Circuit Court.

On May 23, 1973, the Fourth District Court of Appeal had entered its order vacating its prior April 17, 1973 order, and set Respondent's Motion to Dismiss for oral argument (Appendix DPx 15).

By his Assignments of Error in the Fourth District Court of Appeal, Petitioner raised as errors committed by the trial Court, the adverse rulings upon the denial of due process of law in the administrative proceedings before the Plantation City Council and the Plantation Municipal Court, and the denial of due process to Petitioner, in that there had been a departure from essential elements of the law in the administrative proceedings before the Plantation City Council and the Plantation Municipal Court. The Fourth District Court of Appeal ruled directly thereon in granting the Motion to Quash or Dismiss the Appeal.

Petitioner then filed a Petition for Certiorari in the Supreme Court of Florida asserting the constitutional grounds heretofore stated, and also that it constituted a denial of due process of law, and a denial of equal protection of the law to deny Petitioner his right of appeal [see Article V, Section 4(b) Jurisdiction, and Article V, Section 3(b) Jurisdiction, Constitution of the State of Florida], as well as the other rights previously enumerated. The Supreme Court of Florida denied certiorari, thereby rejecting and ruling directly upon the constitutional issues presented.

The charges against Petitioner were (Appendix DPx 4) that he:

> 1. Allegedly disregard and violate, in the performance of your contracting business in said City, the Building Code and Ordinances of the City of Plantation, Florida, on a continuing basis, from on or about January 1, 1968, to on or about October 14, 1968, in violation of Section 6-35(e), Code of Ordinances, City of Plantation. Specifically, you allegedly:

A. Failed to provide competent supervision so that said Building Code has been regularly violated in the following phases of construction, to wit: fill, concrete and steel.

B. Regularly failed inspections conducted by the Building Department of said City for the purpose of requiring compliance with said code.

2. Allegedly use unlicensed sub-contractors in the period of June 1, 1968, to on or about October 14, 1968, in violation of Section 6-35(h), Code of Ordinances, City of Plantation.

These charges were made upon the complaint of C. Douglas Rice who testified at the administrative hearing. The repeated attempts by Petitioner to question and cross-examine Rice were met by repeated objections by the prosecution. The objections were sustained and Petitioner was not allowed to cross-examine his accuser or to test the veracity, bias, prejudice, motives, or ability to recall facts of this witness who offered damaging (and hearsay) evidence against him (Appendix E).

REASONS FOR GRANTING THE WRIT

If a state's action, whether under the authority of legislative or judicial interpretation, deprives an individual of a fundamental constitutional right, a Federal Court has the authority, and duty, to review such action. *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707; *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694; *Mapp v. Ohio*, 307 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081; *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161.

In *Shelley v. Kraemer, supra*, this Court stated that:

> State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands. 334 U.S. at 20.

In *Wisconsin v. Constantineau*, 400 U.S. 433, 436, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971), this Court stated:

> It is significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between rule by law and rule by fiat.
>
> * * *
>
> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.

This Court has repeatedly held that a person's right to pursue his calling and earn a livelihood cannot be diminished, taken away, or otherwise infringed upon, without rigorous adherence to the fundamental rights to due process of law, and that in regulating an occupation or profession the regulating body must accord equal and non-discriminating treatment to those over whom it seeks to exercise control. See, e.g. *Dent v. State of West Virginia*, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623; *Peters v. Hobby*, 349 U.S. 331, 75 S.Ct. 790, 99 L.Ed 1129; *Slochower v. Board of Higher Education*, 350 U.S. 551, 76

S.Ct. 637, 100 L.Ed. 692; *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796; *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377; *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287. See also, *Southern Stevedoring Co. v. Voris*, 5th Cir. 1951, 190 F.2d 275; *Carter Products v. Federal Trade Commission*, 9th Cir. 1953, 201 F.2d 446; *Automobile Sales Co. v. Bowles*, N.D. Ohio 1944, 58 F.Supp. 469.

In *Goldberg v. Kelly, supra*, this Court held that a welfare recipient must be given an opportunity to confront and cross-examine witnesses relied upon by an agency in terminating public assistance payments. In so holding, this Court stated:

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses E.g., ICC v. Louisville & N.R. Co., 227 U.S. 88, 93-94, 33 S.Ct. 185, 187-188, 57 L.Ed. 431 (1913); Willner v. Committee on Character & Fitness, 373 U.S. 96, 103-104, 83 S.Ct. 1175, 1180-1181, 10 L.Ed.2d 224 (1963). What we said in Greene v. McElroy, 360 U.S. 474, 496-497, 79 S.Ct. 1400, 1413, 3 L.Ed. 2d 1377 (1959), is particularly pertinent here:
>
> > 'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an

> opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, * * but also in all types of cases where administrative * * * actions were under scrutiny.' 397 U.S. at 269.

The Petitioner was whipsawed during the administrative proceeding. The administrative board made a mockery of Petitioner's right to confront his accuser and subject him to a vigorous and searching cross-examination. Petitioner's counsel's repeated objections to the prosecutor's questions were overruled with the statement by the Board that Petitioner would have an opportunity upon cross-examination to show why the objectional matter admitted into evidence should not be considered probative or relevant to the inquiry (Appendix G).

However, the administrative board followed two standards—a loose rule for admissibility of evidence favorable to the accuser; an unconstitutionally tight rule for evidence favorable to the accused. In fact, when the Petitioner began cross-examination, the Board limited the degree of that testimony so strictly that it violated the

Petitioner's constitutional rights. In *Carter Products v. Federal Trade Commissioners, supra*, the Court stated:

> Now clearly it is not permissible for the commission to qualify and use a witness for its own purposes . . . and then reduce him for purposes of cross examination [to a lesser purpose]. *Carter Products, supra* at 454.

As the Court pointed out in *Southern Stevedoring Co. v. Voris, supra*, Petitioner is "entitled to ascertain on cross examination whether there are any additional or explanatory facts, and to test the knowledge and competence of the witnesses and the basis of their professional opinions." [*Southern Stevedoring Co., supra* at 278.]

There can be no doubt that the Respondent denied to the Petitioner his fundamental and constitutional right. Petitioner insisted upon and preserved his rights throughout the administrative proceedings. Petitioner exhausted his administrative remedies, and sought an extraordinary writ enforcing his rights. The judicial branch of the State of Florida rejected his plea and further compounded the wrong.

This Court has the power to correct this wrong. See *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930. See also, *See v. City of Seattle*, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943.

In the *Camara* case, *supra*, this Court, under similar procedural circumstances, vacated state court judgments denying an extraordinary writ and directed proceedings consistent with this Court's opinion holding that there had been a denial of due process.

CONCLUSION

The Court should assume jurisdiction, vacate the State and municipal judgments and rulings and direct a dismissal of the charges against Petitioner.

Respectfully submitted,

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